MBV Technologies, Inc. ***and*** **Local 58, International Brotherhood of Electrical Workers**, AFL–CIO**.** Case 7–CA–42203

June 30, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN AND BRAME

Upon a charge filed by Local 58, International Brotherhood of Electrical Workers, AFL–CIO (the Union) on July 9, 1999, and an amended charge filed by the Union on September 2, 1999, the General Counsel of the National Labor Relations Board issued a complaint on October 25, 1999 against MBV Technologies, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On May 16, 2000, the General Counsel filed a Motion for Default Judgment on the Pleadings with the Board. On May 18, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Default Judgment disclose that the Region, by letter dated November 16, 1999, notified the Respondent that unless an answer were received by November 30, 1999, a Motion for Default Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, MBV Technologies, has been a corporation, with an office and place of business located in Lathrup Village, Michigan, where it is engaged in the installation, maintenance, and service of communication related technology devices for commercial customers. During the year ending December 31, 1998, Respondent, in the regular course of its business, purchased goods valued in excess of $50,000 from points located outside the State of Michigan, and caused said goods to be shipped directly to its Lathrup Village facility. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

James Riggins	President
Eugene Larkin	Represntative

The following employees of the Respondent (the unit) constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time installers and technicians employed by the Employer at its facility located at 28050 Southfield Road, Suite 1, Lathrup Village, Michigan; but excluding office clerical employees, guards and supervisors as defined in the Act.

At all material times, the Union has been the designated collective-bargaining representative of the employees in the unit and has been recognized as such by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from March 1, 1998 through February 29, 2000.

Since about January 9, 1999, and continuing to date, the Respondent has failed and refused to pay contractual wage rates and vacation pay rates to unit employees. These terms and conditions of employment are mandatory for the purposes of collective bargaining. The Respondent engaged in this practice without the consent of the Union.

On about April 22, and July 27, 1999, by letter, and again on about May 6, 1999, orally, the Union requested the Respondent to provide certain information to the Union regarding unit employees and the amount of wages paid to and owed to unit employees.

Since about April 22, 1999, the Respondent has delayed, failed, and refused to provide the Union with the requested information as described above. The information sought is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

On about June 6, 1999, the Respondent bypassed the Union and dealt directly with its employees in the unit by offering wage increases to employees if they would persuade the Union to cease efforts on behalf of unit employees.

Sometime after May 6, 1999, the Respondent, by James Riggins, threatened employees that he would close the business before he would pay backpay to unit employees.

Sometime after May 6, 1999, and again on about August 27, 1999, the Respondent, by James Riggins, implied that it would be futile to engage in activities on behalf of the Union by telling employees that he was not going to pay them backpay owed under the collective-bargaining agreement.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has interfered with, restrained and coerced employees, and has failed and refused to bargain collectively in good faith with the exclusive collective-bargaining representative of it employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to pay contractual wage rates and vacation pay rates to unit employees, we shall order the Respondent to make unit employees whole for all losses incurred, with interest. Backpay is to be computed in accordance with *Ogle Protection Services*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 293 NLRB 1173 (1987).

Further, having found that the Respondent has violated Section 8(a)(1) and (5) by failing since about April 22, 1999, to provide information to the Union regarding unit employees and the amount of wages paid to and owed to unit employees, we shall order the Respondent to provide the Union with the requested information.

Further, having found that the Respondent violated Section 8(a)(1) and (5) by bypassing the Union and dealing directly with its employees in the unit, and offering wage increases to employees if they would persuade the Union to cease efforts on behalf of unit employees, we shall order the Respondent to cease and desist from this activity and to bargain in good faith with the Union upon request with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment of the unit employees.

Further, having found that the Respondent violated Section 8(a)(1) of the Act by threatening its employees that it would close the business before it would pay backpay to unit employees and by implying that it would be futile to engage in activities on behalf of the Union, we shall order the Respondent to cease and desist from engaging in that conduct.

ORDER

The National Labor Relations Board orders that the Respondent, MPV Technologies, Lathrup Village, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to provide Local 58, International Brotherhood of Electrical Workers, AFL–CIO with information, relevant and necessary for the Union's performance of its duties as the exclusive collective-bargaining representative of the unit, requested by the Union.

(b) Refusing to pay contractual wage rates and vacation pay rates to unit employees.

(c) Threatening its employees that it would close the business before it would pay backpay to unit employees and implying that it would be futile to engage in activities on behalf of the Union

(d) Bypassing the Union and dealing directly with unit employees by offering wage increases in return for employees persuading the Union to cease efforts on behalf of the unit.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain in good faith with the Union with respect to rates of pay, wages, hours of employment and other terms and conditions of employment of the employees in the following appropriate unit:

> All full-time and regular part-time installers and technicians employed by the Employer at its facility located at 28050 Southfield Road, Suite 1, Lathrup Village, Michigan; but excluding office clerical employees, guards and supervisors as defined in the Act.

(b) Provide the Union with the information regarding unit employees and the amount of wages paid to and owed unit employees requested by the Union in April, May, and July 1999.

(c) Make whole unit employees for all losses incurred by Respondent's failure to pay unit employees contractual wages for work performed and vacation pay rates, with interest, as set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all

other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Lathrup Village, Michigan, copies of the attached notice marked "Appendix".[1] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 9, 1999.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 30, 2000

John C. Truesdale, Chairman

Peter J. Hurtgen, Member

J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to provide Local 58, International Brotherhood of Electrical Workers, AFL–CIO with information, relevant and necessary for the Union's performance of its duties as the exclusive collective-bargaining representative of the unit, requested by the Union.

WE WILL NOT refuse to pay wage and vacation rates as enumerated in the collective-bargaining agreement in effect from March 1, 1998 through February 29, 2000.

WE WILL NOT threaten to close the business before paying backpay to unit employees and implying that it would be futile to engage in activities on behalf of the Union.

WE WILL NOT bypass the Union and deal directly with unit employees by offering wage increases in return for employees persuading the Union to cease efforts on behalf of the unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union in good faith, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment of the employees in the following unit:

> All full-time and regular part-time installers and technicians employed at our facility located at 28050 Southfield Road, Suite 1, Lathrup Village, Michigan; but excluding office clerical employees, guards and supervisors as defined in the Act.

WE WILL provide the Union with the information regarding unit employees and the amount of wages paid to and owed unit employees requested by the Union in April, May, and July 1999.

WE WILL make whole unit employees for all losses incurred by our failure to pay unit employees contractual wages for work performed and vacation pay rates, with interest.

MBV TECHNOLOGIES, INC.

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."